IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2316 OF 2002.
IN
FIRST APPEAL NO.708 OF 2002.

N.D.Barne. ... Applicant.
Versus.
Smt.Gayabai Baburao Sawant and ors.... Respondents.

Shri M.V.Limaye for the Applicant.

Shri G.N.Mardikar holding for Shri A.A.Kumbhakoni for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 16th January, 2007.

P.C.:

1. Heard the Advocate for the Applicant and the Advocate appearing for the 1st Respondent.

2. The main contention raised in the Appeal by the Applicant is that the Insurance Company was liable to pay compensation to the 1st Respondent and the learned trial Judge has committed an error by rejecting the claim as against the Insurance Company. The compensation awarded is in the sum of Rs.25,000/- with interest. In my view considering the fact that the Appeal arises out of a claim for compensation under the Motor Vehicle Act, 1988, a blanket stay cannot be granted and the Applicant will have to deposit the entire amount due and payable as per the impugned Award.

3. Hence the Civil Application is disposed of by

the following order:

i) There will be interim relief in terms of prayer clause (a) subject to condition of the Applicant depositing the entire amount due and payable under the impugned Judgment and Award with the concerned Tribunal within a period of 8 weeks from today. If compliance is not made within the stipulated time, the interim relief will stand vacated.

ii) If the amount is deposited, the learned Member of the Tribunal will permit the original Claimant to withdraw a sum of Rs.25,000/- without security subject to filing an undertaking before the Tribunal to redeposit the amount with appropriate rate of interest in case the Applicant succeeds in the Appeal and a direction to that effect is issued by this Court.

iii) In case the Applicant succeeds in the Appeal by showing that the insurer is liable, it is obvious that the compensation amount can be recovered by the Applicant from the insurer.

iv) The balance amount deposited by the Applicant shall be permitted to be withdrawn by the Claimant subject to furnishing adequate security to the satisfaction of the Tribunal. Before accepting security, the Tribunal will hear the Applicant.

v) The Application is disposed of in the above terms with no order as to costs.

Judge.